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SIRHAN JUROR DEBATE RAGES

Judge Withholds Ruling on Seating

By GEORGE ZUCKER

LOS ANGELES (AP) — The judge in the Sirhan Bishara Sirhan murder trial withheld an immediate ruling Thursday on a prosecution attempt to dismiss a prospective juror who opposes the death penalty.

Superior Judge Herbert V. Walker didn't say when he would make his decision on what has become the hottest argument so far at the trial of the 24-year-old Jordanian accused of the slaying last June of Sen. Robert F. Kennedy.

Meanwhile, five men and six women had been tentatively seated as prospective jurors.

Mars Alvina Alvidrez, a hardware store employe said Wednesday she couldn't vote a death penalty "for any crime under any circumstances."

The prosecution sought to have her dismissed. The defense argued against dismissal, saying it would like to have her for at least the guilt-innocence phase of the trial.

SEPARATE TRIALS

In California there are separate trials in capital cases for determination of guilt or innocence, and for fixing the penalty.

Dep. Dist. Atty. John E. Howard argued that he did not believe it was "required by law to continue with a juror who has said she would under no circumstances impose the death penalty."

Grant B. Cooper, chief defense counsel, countered: "I do not feel that the question facing this court has been decided by any other court."

Cooper cited the Witherspoon ruling of the U.S. Supreme Court. He said it held that juries from which opponents of the death penalty are excluded "cannot be called fair and impartial but are rather hanging juries."

Howard said that the Witherspoon case did not involve the right of the prosecution to challenge a prospective juror for cause, or the right of the state to exclude from the jury persons opposed to capital punishment.

MISTRIAL FEARED

During a recess, Howard told newsmen that a jury with persons such as Mrs. Alvidrez would automatically rule out a death penalty. "This," he said, "would cause a mistrial and the next jury might be similarly oriented. In time there would be so many mistrials it would slow down if not eliminate death penalties in California."

Among prospective jurors tentatively seated was Benjamin Glick, operator of a West Los Angeles retail outlet. Glick, who said he is Jewish, added that nonetheless he could impartially consider evilence against Sirhan, an Arab.

Last prospective juror to be tentatively seated Thursday was Gilbert Grace, a water and power department employe.